

\*\*E-Filed 6/27/2011\*\*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

VIRGINIA C. RUPISAN,

Plaintiff,

v.

DOWNEY SAVINGS AND LOAN  
ASSOCIATION, F.A.; DSL SERVICE  
COMPANY; OCWEN LOAN SERVICING, LLC;  
WESTERN PROGRESSIVE, LLC; and DOES 1  
through 50, inclusive

Defendants.

Case Number 5:10-cv-5755-JF/HRL

ORDER<sup>1</sup> GRANTING MOTION TO  
EXPUNGE LIS PENDENS

[Re: Docket Nos. 40]

On March 23, 2011, Plaintiff recorded a lis pendens against the property at issue in this action. Defendants Ocwen Loan Servicing and Western Progressive move to have the notice expunged.

A lis pendens is a “recorded document giving constructive notice that an action has been filed affecting title or right to possession of the real property described in the notice.” *Urez Corp. v. Superior Court*, 190 Cal. App. 3d 1141, 1144 (1987). The practical effect of a lis pendens is to cloud the property’s title and prevent its transfer until the litigation is resolved or

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<sup>1</sup> This disposition is not designated for publication in the official reports.

the lis pendens is expunged or released. *Malcom v. Superior Court*, 29 Cal. 3d 518, 523-24 (1981). “The court shall order that the notice be expunged if the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim.” Cal. Civ. Code § 405.32. “The court shall direct that the party prevailing on any motion [regarding lis pendens] be awarded the reasonable attorney’s fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney’s fees and costs unjust.” Cal. Civ. Code § 405.38.

On June 27, 2011, the Court dismissed the instant action on the merits and entered judgment against Plaintiff and for Defendants. Under these circumstances, Plaintiff cannot establish the probable validity of her federal claims. Defendant requests an award of \$1,840 in attorney fees and costs against Plaintiff. Defendants’ counsel declares that her billing rate is \$200 per hour. Declaration of Denetta EJ Scott ¶ 2. She declares that she spent four hours preparing the motion to expunge and estimated that she would expend another five hours reviewing the opposition brief and preparing a reply. The filing fee for the motion is \$40.00. Plaintiff did not file opposition to the motion. Accordingly, the Court will direct Plaintiff to pay Defendants’ reasonable attorneys’ fees in the amount of \$840.00.

### ORDER

- (1) Defendants’ motion to expunge lis pendens is GRANTED. IT IS HEREBY ORDERED that the Notice of Pendency of Action recorded on March 23, 2011, in the County of Santa Clara Recorder’s Office as Instrument Number 21120217 shall be expunged without conditions on the grounds that the notice of pendency of action does not establish by a preponderance of evidence the probable validity of the real property claim. The Notice of Pendency of Action that is the subject of this Order concerns real property located in the County of Santa Clara, California, commonly known as 2461 Sherlock Driver, San Jose, CA 95123, and legally described as:

LOT 115, AS SHOWN ON THAT CERTAIN MAP ENTITLED “TRACT NO. 5943 FAIRMONT,” WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON APRIL 6, 1977 IN BOOK 392 OF MAPS, AT PAGES 16 & 17. EXCEPTING THEREFROM THE UNDERGROUND WATER OR RIGHTS THERETO, WITH NO RIGHT OF SURFACE ENTRY, AS GRANTED TO SAN JOSE WATER WORKS, A CALIFORNIA CORPORATION BY INSTRUMENTS RECORDED MAY 27, 1977 IN BOOK CB79 OF OFFICIAL RECORDS, PAGE 183.

(2) Plaintiff is ordered to pay Defendants' attorneys' fees in the amount of \$840.00.

DATED: June 27, 2011

  
JEREMY FOGEL  
United States District Judge

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through 50, inclusive

Defendants.

Case Number 5:10-cv-05755-JF (HRL)

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee of the Office of the Clerk,  
United States District Court, Northern District of California.

On Tuesday, June 28, 2011, I served a true and correct copy of the attached document on  
each of the persons hereinafter listed by placing said copy in a postage paid envelope and  
depositing said envelope in the United States mail, or by placing said envelope in the outgoing  
mail delivery receptacle located in the Clerk's Office:

Virginia C. Rupisan  
2461 Sherlock Drive  
San Jose, CA 95121

DATED: 6/27/2011

For the Court  
Richard W. Weiking, Clerk

By: \_\_\_\_\_/s/  
Diana Munz  
Courtroom Deputy Clerk

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